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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

**All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**OBJECTION OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS
TO MOTION OF THE DEBTORS FOR
ORDER (I) ESTABLISHING DEADLINE
FOR FILING PROOFS OF CLAIM,
(II) ESTABLISHING THE FORM AND
MANNER OF NOTICE THEREOF, AND
(III) APPROVING PROCEDURES FOR
PROVIDING NOTICE OF BAR DATE
AND OTHER INFORMATION TO ALL
CREDITORS AND POTENTIAL
CREDITORS (DKT. NO. 1784)**

Date: June 11, 2019
Time: 9:30 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102
Objection Deadline: May 31, 2019

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1 The Official Committee of Tort Claimants (the “TCC”) hereby objects to the Motion of
2 Debtors for Order (I) Establishing Deadline for Filing Proofs of Claim, (II) Establishing the Form
3 and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date
4 and Other Information to All Creditors and Potential Creditors (Dkt. No. 1784) (the “**Motion**”)¹
5 filed by PG&E Corporation and Pacific Gas and Electric Company (the “**Debtors**” or “**PG&E**”).

6 **I. INTRODUCTION**

7 On May 3, 2019, the TCC filed a motion seeking approval of its model proof of claim form
8 for Fire Claims. *See* Dkt. No. 1824. The TCC’s form substantially conforms to Official Form 410.
9 The modifications made by the TCC to the Official Form are intended to ensure that Fire Claimants
10 provide information regarding the basis for their Fire Claims, the alleged harm caused by the related
11 fire, and the damages sought. The TCC’s form is designed to meet applicable legal requirements
12 so that each Fire Claim is entitled to prima facie validity, while also making it as easy as possible
13 for unrepresented victims to file claims so they are not excluded. This is critical here because many
14 victims of the 2018 Camp Fire, which destroyed 13,972 residences, 528 commercial structures and
15 4,293 other buildings as well as documents and records contained therein, are still homeless and
16 suffering trauma. A fair and just claim form must take this reality into account.

17 Contemporaneously with the filing of this Objection, the TCC is also filing an application
18 to retain the renowned noticing firm Angeion Group, LLC (“**Angeion**”) and a motion to approve
19 the TCC’s notice plan. As set forth in the Declaration of Steven Weisbrot (attached as **Exhibit 1**),
20 the experts at Angeion, who have extensive experience in creating and administering claims and
21 notice programs designed to maximize claimant reach and participation, have designed a notice
22 plan to meet applicable legal requirements given the unique circumstances presented by these cases.
23 The TCC’s plan utilizes a wide range of methods to reach potential claimants, including direct
24 notice through mail and email, paid media in the form of television, radio, newspaper and magazine
25 publication, billboards, and social media, as well as grassroots and experimental marketing. It is
26 critical that a robust plan be implemented, as many victims of the 2018 Camp Fire are still homeless.

27 _____
28 ¹ Capitalized terms used but not defined in this Objection have the meanings given to them in the Motion. The terms
“**Fire Claim**” and “**Fire Claimant**” shall have the meanings given to them in the Memorandum in Support of the
TCC’s Motion to approve the TCC’s model proof of claim form (Dkt. No. 1825).

1 The TCC recognizes that a gating issue in the Chapter 11 Cases is the magnitude of PG&E's
2 liability with respect to Fire Claims. Sources of relevant data exist and retained professionals have
3 already commenced the work necessary to estimate Fire Claims on an aggregate basis. PG&E has
4 substantial information, although to date PG&E has been unwilling to share it with the TCC. Other
5 parties, including subrogation insurers, also have relevant information. Data is also publicly
6 available or can be obtained from third parties. The TCC's form and notice procedures recognize
7 that it is not necessary to obtain discovery from thousands of victims whose records were destroyed
8 in the fires and who are not experts. The TCC's process, however, leaves open the possibility that
9 another phase could occur whereby victims could be required to provide more information.

10 PG&E wants to implement a different approach. PG&E's form for Fire Claimants does not
11 substantially conform to Official Form 410 and requires irrelevant information and supporting
12 documentation that is not required under the Bankruptcy Rules. PG&E also proposes a noticing
13 plan that is embarrassing. PG&E refuses to take steps to obtain updated address information
14 beyond the forwarding information available from the U.S. Postal Service. PG&E proposes to
15 spend \$1.5 million to \$2 million on its Supplemental Notice Program. Motion at 11, 23. PG&E's
16 approach ignores the fact that fires PG&E caused destroyed homes and displaced thousands of
17 parties, making a standard noticing program constitutionally insufficient in this context.

18 Finally, PG&E proposes an early Bar Date, which, when combined with PG&E's unduly
19 complex claim form and minimalist noticing procedures, will necessarily have the intended effect
20 of excluding thousands of unrepresented victims. PG&E's procedures are designed to minimize
21 PG&E's liability and arm it with tools to object to valid claims. PG&E cloaks its plan in bankruptcy
22 jargon designed to create the impression that PG&E's plan is necessary to obtain "critical"
23 information needed to estimate Fire Claims. But, a basic review of the events beginning with the
24 2015 Butte Fire through the 2018 Camp Fire shows that this narrative is not credible.

25 **II. BACKGROUND**

26 **A. The 2015 Butte Fire**

27 In September 2015, a wildfire ignited and spread in Amador and Calaveras Counties in
28 Northern California (the "**Butte Fire**"). Woltering Declaration (attached as **Exhibit 2**) at Ex. A.

The Butte Fire burned 70,868 acres, resulted in 2 fatalities, destroyed 965 structures including 549 homes, 368 outbuildings and 4 commercial properties, and damaged 44 structures. *Id.* at Ex. B, Part 1, p. 22. PG&E is liable. As Cal Fire found, the Utility and/or its vegetation management contractors—ACRT Inc. and Trees, Inc.—failed to identify potential hazards during its vegetation management program, which led to a tree contacting the Utility’s electric line, igniting the fire. *Id.*

Following the Butte Fire, more than 3,700 individual plaintiffs representing 2,030 households and their insurance companies against PG&E and its contractors. *Id.* at Ex. C, 29. A petition was filed on November 12, 2015 asking the Judicial Council of California for a Judicial Council Coordinated Proceeding (“JCCP”). *See generally, id.* at Ex. B, 22. On December 3, 2015, the JCCP petition was granted and the actions were coordinated as the Butte Fire Cases, JCCP Number 4853. On May 23, 2016, individual plaintiffs filed a master complaint against the Utility and its two vegetation management contractors. *Id.* at 52. Subrogation insurers also filed a separate master complaint. *Id.* In 2016, PG&E estimated minimum losses for the Butte Fire at \$750 million. *Id.* In 2017, PG&E revised its minimum claims estimate to \$1.1 billion. *Id.* at Ex. C, 139. PG&E explained that this revision was due to additional information obtained through discovery from the plaintiffs and from ongoing mediations and settlements. *Id.*

Prior to the Petition Date, PG&E engaged in more than four years of litigation, discovery, mediations and settlements regarding the Butte Fire. During the period leading up to the bankruptcy, PG&E was settling an average of 40–60 cases per month with Butte Fire victims. *See* Singleton Decl. (Dkt. No. 770) at ¶ 2. As of December 31, 2017, PG&E had entered into “settlement agreements in connection with the Butte fire corresponding to approximately \$624 million.” Woltering Decl. at Ex. C, 139 n.1. In the two months leading up to the bankruptcy, PG&E settled approximately 52 cases with Butte Fire victims. *See* Singleton Decl. at ¶ 2.

PG&E has settled the majority of cases stemming from the 2015 Butte Fire. These claims are effectively liquidated. By virtue of its participation in discovery, mediations and settlements, PG&E has a vast amount of information relating to the Butte Fire and the claims arising therefrom. PG&E offers no explanation in its Motion as to what information it needs to obtain through its claim form relating to the Butte Fire that will enable it to estimate tort claims on an aggregate basis.

B. The 2016 Ghost Ship Fire

On December 2, 2016, a fire broke out at the “Ghost Ship” warehouse located on 31st Avenue in Oakland, California (the “**Ghost Ship Fire**”). Woltering Decl. at Ex. D, ¶ 1. At the time the fire broke out, the Ghost Ship was hosting more than 100 individuals for an electronic dance music event. *Id.* at ¶ 2. With no fire-suppression system or alarms in the warehouse, the Ghost Ship Fire claimed 36 lives, all from smoke inhalation, and left many others seriously injured. *Id.* at ¶¶ 1, 4. In connection with the Ghost Ship Fire, 31 actions were filed, involving 47 individual plaintiffs. In May 2017, a master complaint was filed in the Alameda Superior Court consolidating the individual actions (the “**Ghost Ship Litigation**”). *Id.* at Ex. E, 37.

The master complaint names the property owner, the master tenant, neighboring tenants, and PG&E. *Id.* This complaint alleges that the Utility violated the California Labor Code and various electric rules. *Id.* The statute of limitations for Ghost Ship Fire claims expired in December 2018. The population of Fire Claimants is limited to known plaintiffs in the Ghost Ship Litigation. Prior to the Petition Date, PG&E had the opportunity to engage in significant discovery related to the claims and damages alleged by the plaintiffs. PG&E offers no explanation in its Motion as to what information it needs to obtain through its claim form relating to the Ghost Ship Fire that will enable it to estimate tort claims on an aggregate basis.

C. The 2017 North Bay Fires

Beginning on October 8, 2017, multiple wildfires spread through Northern California, including Napa, Sonoma, Butte, Humboldt, Mendocino, Del Norte, Lake, Nevada, and Yuba Counties, as well as in the area surrounding Yuba City (the “**North Bay Fires**”). *Id.* at Ex. C, 27. At their peak, there were 21 major wildfires in California that, in total, burned over 245,000 acres, damaged or destroyed 14,700 homes, 3,600 vehicles, and 728 businesses, and resulted in 44 fatalities and hospitalized over 185 others. *See Debtors’ Request for Judicial Notice, Herndon v. PG&E Corp.*, Adv. Pro. No. 19-03005 (Bankr. N.D. Cal. Mar. 18, 2019), Dkt. No. 10-2, at ¶ J. As Cal Fire found, PG&E’s faulty equipment and its failure to identify hazards during its vegetation management program ignited 19 of the 21 North Bay Fires. *Id.* at Ex. I, 43.

1 PG&E is liable. January 2018 estimates by the California Department of Insurance
2 announced 55,000 insurance claims had been filed for 2017 wildfire losses, including \$10 billion
3 of claimed losses for the North Bay Fires. *Id.* at 45. This amount excludes uninsured losses,
4 interest, attorneys' fees, personal injury and wrongful death damages or other costs. *Id.* at 44.
5 PG&E has stated that its liability for the North Bay Fires could significantly exceed the \$10 billion
6 in estimated insured property losses. *Id.* at 45. During 2018, PG&E accrued charges of more than
7 \$3.5 billion for third-party claims connected to the North Bay Fires. *Id.* at 47–48.

8 Motivated by the need to compensate victims and understand the magnitude of the damages,
9 the parties to the North Bay JCCP—including individual plaintiffs, public entity plaintiffs,
10 subrogation plaintiffs, and PG&E—worked together to develop a stipulated claims evaluation
11 process. This process involved staged discovery. *Id.* at Ex. F, 14. The first discovery stage (“**Stage**
12 **One**”) related to damages discovery from individual plaintiffs, public entity plaintiffs, and
13 subrogation plaintiffs, in addition to liability discovery. *Id.* The second discovery stage related to
14 expert discovery on issues of liability and damages. *Id.*

15 Stage One provided for a categorical analysis of damage claims and exchange of
16 information between wildfire claimants, counsel, and the insurance companies. *Id.* at 14–15.
17 Subsequently, BrownGreer PLC (“**BrownGreer**”) was appointed to manage and control the
18 submission of data about the claimants (claimant/household names, loss address, type of loss,
19 counsel information, insurance carrier information, identification of the fire(s) alleged to have
20 caused their injuries); insurance claim information (name of insured, carrier name, claim number,
21 date of loss, loss location, amount paid, open reserves, and status of any adjustment);
22 uninsured/underinsured claims; supporting documentation for the alleged losses (videos,
23 photographs, electronic images); and individual subrogation claim files (payments by coverage,
24 including payments under Building, Contents/Business Personal Property, Alternative Living
25 Expenses/Business Interruption and Auto/Specialty; a copy of the closed claim file). *Id.* at Ex. G.
26 As of May 30, 2019, BrownGreer houses data on over 11,347 Fire Claimants whose Fire Claims
27 arise from the North Bay Fires. *See* Strunk Declaration (attached as **Exhibit 3**) at ¶ 7.
28

At the end of 2018, the North Bay JCCP was well into Stage One of discovery, and the first bellwether trial on PG&E's liability for the Atlas fire was scheduled to begin in September 2019. Woltering Decl. at Ex. I, 44. This litigation, including the trial date with respect to the Atlas fire, is stayed due to the Chapter 11 Cases. *Id.* By virtue of the staged discovery in the North Bay JCCP, the parties, including PG&E, possess information relating to the North Bay Fires and the Fire Claims arising therefrom. PG&E offers no explanation in its Motion as to what information it needs to obtain through its claim form relating to the North Bay Fires that will enable it to estimate tort claims on an aggregate basis.

D. The 2018 Camp Fire

Just before sunrise on November 8, 2018, the most destructive wildfire in California history started near the town of Pulga (the "**Camp Fire**"). *Id.* at Ex. H. It moved rapidly west consuming 153,336 acres, causing 85 civilian fatalities, and destroying 13,972 residences, 528 commercial structures and 4,293 other buildings. *Id.* at Ex. I, 41. The Camp Fire was caused by unsafe electrical infrastructure owned, operated, and improperly maintained by PG&E. *Id.* at Ex. H. PG&E has estimated damage claims from the Camp Fire at more than \$10.5 billion. *Id.* at Ex. I, 47.

In the three-month window between the Camp Fire and the Petition Date, PG&E was named in nearly 100 actions on behalf of at least 4,200 plaintiffs related to the 2018 Camp Fire, 9 of which seek to be certified as class actions. *Id.* at 44. Plaintiffs in Camp-Fire-related actions seek damages that include wrongful death, personal injury, property damage, evacuation costs, medical expenses, establishment of a class action medical monitoring fund, punitive damages, attorneys' fees and other damages. *Id.* Insurance carriers have filed 37 similar subrogation complaints with respect to the 2018 Camp Fire in the Sacramento County Superior Court. *Id.* at 45.

As of the Petition Date, no coordinated proceeding had been granted for the Camp Fire. Following the bankruptcy filing, all pending civil litigation against PG&E for the Camp Fire was stayed. Despite this, as of May 30, 2019, over 10,098 Fire Claimants whose Fire Claims arise from the Camp Fire have uploaded data relating to their Fire Claims using the portal maintained by BrownGreer. *See* Strunk Decl. at ¶ 7. PG&E also possesses substantial information regarding Fire Claims arising from the Camp Fire. In its March 2019 10-Q, PG&E estimates its losses with respect

1 to the Camp Fire and the North Bay Fires at \$30 billion. Woltering Decl. at Ex. I, 46. Again,
2 PG&E offers no explanation in its Motion as to what information it needs to obtain through its
3 claim form relating to the Camp Fire that will enable it to estimate tort claims on an aggregate basis.

4 **III. THE TCC'S PROPOSED TWO-STEP PROCESS**

5 The TCC does not view the proof of claim form as a proper device to obtain discovery.
6 Given the nature and amount of information in PG&E's possession and available from parties other
7 than Fire Claimants, the TCC does not expect experts employed to estimate Fire Claims to pour
8 over proofs of claim or otherwise rely on them as a source of information other than to identify Fire
9 Claimants. But, the TCC does believe that it is essential that Fire Claimants file proofs of claim so
10 that they are treated as creditors for purposes of voting and distribution.

11 To this end, the Court should *first* approve a simplified claim form for Fire Claims and
12 mandate robust notice procedures. Over 21,500 Fire Claimants have already uploaded data about
13 their Fire Claims into the BrownGreer database. *See* Strunk Decl. at ¶ 7. These Fire Claimants are
14 represented by counsel. The TCC expects that these Fire Claimants will file proofs of claim. The
15 TCC also hopes that unrepresented Fire Claimants will file proofs of claims as well. It is possible,
16 but unlikely, that the parties could need to obtain information from Fire Claimants after the Bar
17 Date for purposes of estimating claims on an aggregate basis.

18 If this occurs, and these Fire Claimants are unwilling to provide information on a voluntary
19 basis, the Court can approve a *second* supplemental information request targeted at these Fire
20 Claimants. This may not be necessary; however, it is plainly possible to utilize a two-step process
21 that maximizes creditor participation and obtains information needed to confirm a plan of
22 reorganization that results in distributions to Fire Claimants.

23 **IV. PG&E'S MOTION AND PROPOSED FORMS AND PROCEDURES**

24 PG&E offers a different approach. PG&E's Motion asks the Court to approve claim forms
25 and notice procedures designed to minimize PG&E's liability to Fire Claimants.

26 **A. PG&E's Wildfire Claimant Proof of Claim**

27 PG&E wants the Court to approve a form that will give it tools to defeat valid claims. Under
28 the Proposed Order, Fire Claimants must provide "all of the information requested in the Wildfire

1 Claimant Proof of Claim Form,” or else face a claim objection for non-compliance with a Court
2 order. Motion at Ex. A, ¶ 3(c). PG&E’s form is confusing, requires documentation that is not
3 required under the Bankruptcy Rules, and requires Fire Claimants to provide amounts for claims
4 that are generally the subject of expert testimony and insurance information that is irrelevant and
5 duplicative. PG&E also asks the Court to deem claims filed using Official Form 410 invalid.

6 Questionnaire. Part 3 of PG&E’s form requires Fire Claimants to check a box identifying
7 the fire giving rise to the Fire Claim. PG&E lists 23 fires using names like “Blue,” “Honey,”
8 “Pocket,” and “Sulphur.” As set forth in the Cordova Declaration (attached as **Exhibit 4**), not all
9 Fire Claimants even know the name of the fire that destroyed their homes, while other Fire
10 Claimants were impacted by converging fires. Cordova Decl. at ¶ 3. Part 8 of PG&E’s form
11 requires Fire Claimants to disclose whether they intend to rebuild. As set forth in the Riddle
12 Declaration, this question is unfair, as victims cannot have an intent to rebuild unless and until they
13 receive the money necessary to do so. *See* Dkt. No. 2242-1 at ¶ 9. This question is designed to
14 trap victims by limiting their damages.

15 Documentation. PG&E’s form also requires Fire Claimants to provide documentation for
16 any claim for property damage, personal injury, emotional distress, wrongful death, and/or
17 business/economic loss. Motion at Ex. C-2. Exemplar documentation identified in PG&E’s form
18 includes: proof of ownership (titles, deeds); property appraisals; insurance documents or
19 lease/rental agreements; descriptions of all personal property; information about insurance
20 coverage, proceeds, and policies; proof of operation of business at the time of the fire; federal tax
21 returns for two years preceding the fire; monthly/annual profit and loss statements or W-9 forms;
22 death certificates; copies of autopsy findings; hospital records; and insurance benefit summaries.

23 Numerical Amounts. PG&E’s form also requires Fire Claimants to provide numerical
24 amounts for certain claims. The form asks Fire Claimants to assign a dollar amount for loss of
25 goodwill, personal injury, and emotional distress. *Id.* In contrast, PG&E scheduled each Fire Claim
26 in an undetermined amount and as disputed, contingent and unliquidated.

27 Insurance Information. PG&E’s proposed form also requires Fire Claimants to identify
28 whether their loss is covered by insurance, the insurer, the covered property, the amount of

1 coverage, and the amount of insurance proceeds (if any) received to date. *Id.* PG&E's form also
2 contains multiple disclaimers and threats about insurance fraud. *Id.* The juxtaposition of the
3 insurance fraud disclaimers and the request for insurance information creates confusion and a
4 chilling effect and may lead to Fire Claimants understating their Fire Claims.

5 Requirement to Re-File Proofs of Claim. PG&E's Proposed Order requires Fire Claimants
6 that have already filed proofs of claim using Official Form 410 to re-file claims using PG&E's
7 form. Motion at 14. This would mean that claims filed using the Official Form would be deemed
8 invalid under PG&E's procedures. PG&E offers no legal authority as to why claims filed using the
9 Official Form should be considered invalid.

10 **B. PG&E's Proposed Notice Procedures**

11 PG&E also seeks approval of notice procedures that are critically deficient. Not only is the
12 form of notice unduly complex, but PG&E is not proposing to take actions necessary to locate
13 updated address information for known claimants. PG&E's Supplemental Noticing Program fails
14 to reflect a serious attempt to provide notice to unknown claimants.

15 Complex Form of Notice. PG&E asks the Court to approve an unduly complex form of
16 notice for Fire Claims. *See* Motion at Ex. B-2. PG&E's Wildfire Claim Bar Date Notice is six
17 pages long, uses single sentences that occupy nearly half a page, and is written in legalese. As
18 reflected in the TCC's proposed notice, attached as **Exhibit 5**, the form of notice can be written in
19 plain English and be no longer than one page in length.

20 Known Fire Claimants. Under its notice procedures, PG&E proposes to provide written
21 notice to parties it considers "Known Wildfire Claimants." Motion at 21. "Known Wildfire
22 Claimant" includes parties that filed complaints prepetition and are represented by counsel and
23 parties that have already filed proofs of claim using Official Form 410. *Id.*

24 PG&E claims that it "will make efforts" to send written notice to parties affected by the
25 2017 Northern California Wildfires, but not the 2018 Camp Fire, using a GIS database. *Id.* at 22.
26 PG&E claims that it will use updated address information maintained in the BrownGreer database
27 and insurance files, but only if such information is given to PG&E "reasonably in advance" of the
28 entry of any order granting the Motion. *Id.* PG&E is not proposing to take actions to obtain updated

1 contact information for Fire Claimants displaced by the fires beyond the forwarding information
2 available from the U.S. Postal Service. PG&E asserts that it has no obligation to conduct “extended
3 searches” “in the name of due process,” and that it can simply rely on its own “books and records”
4 when providing notice to parties it deems “Known Wildfire Claimants.” *Id.* at 31–32.

5 Unknown Fire Claimants. For parties PG&E considers “unknown creditors,” PG&E
6 proposes to provide constructive notice. PG&E’s total budget for its noticing program is \$19
7 million to \$22 million. *Id.* at 11. Of this amount, PG&E proposes to spend \$1.5 million to \$2.0
8 million on Supplemental Notice Procedures that include “newspaper publication notices,” “digital
9 advertising,” “television and radio advertising,” “email notice” and “claim service centers.”
10 Motion at 11, 23. In contrast, the TCC’s notice plan has an estimated cost of \$21.8 million, with
11 \$12.8 million allocated to its media campaign designed to reach unrepresented Fire Claimants. *See*
12 Weisbrot at Ex. A.

13 **C. Proposed September 2019 Bar Date**

14 Finally, PG&E asks the Court to establish September 16, 2019 as the Bar Date for all proofs
15 of claim, including any claims of Fire Claimants. The Camp Fire happened in late 2018, a mere
16 six months ago. Many survivors are still living in tents and portable trailers.

17 **V. DATA SHARING PROPOSAL**

18 Since PG&E filed its Motion, the TCC has sought access to PG&E’s data. The TCC does
19 not have possession, custody or control of the BrownGreer database. This database contains
20 information uploaded to it by over 55 different law firms, each of which represents different Fire
21 Claimants, and each of which has retained work product and common interest privileges. The TCC
22 has proposed that the parties engage in a voluntary, consensual, and collaborative plan to share data
23 and documents to expedite the claims estimation process. As part of this agreement, the TCC would
24 seek the plaintiff lawyers’ agreement to provide PG&E with a secured portal so that it can access
25 appropriate portions the BrownGreer database, which includes categories of data stipulated and
26 agreed to by PG&E in the North Bay JCCP. PG&E, in turn, would be required to produce the
27 substantial data that it has amassed over years of litigation. The TCC wants to have information
28

1 pooled and made available to professionals for the TCC, the Official Committee of Unsecured
2 Creditors, and PG&E to create a level playing field.

3 **VI. ARGUMENT**

4 **A. Legal Standard for Proof of Claim Form**

5 Bankruptcy Rule 3001(a) provides that: “A proof of claim is a written statement setting
6 forth a creditor’s claim. A proof of claim shall conform substantially to the appropriate Official
7 Form.” Fed. R. Bankr. P. 3001(a). An important function of a proof of claim is that it provides
8 notice. As the Ninth Circuit explained in *In re Barker*, “[t]he proof of claim plays the important
9 role of ‘alert[ing] the court, trustee, and other creditors, as well as the debtor, to claims against the
10 estate,’ and the creditor’s intention to enforce the claims.” 839 F.3d 1189, 1195 (9th Cir. 2016)
11 (quoting *In re Daystar of California, Inc.*, 122 B.R. 406, 408 (Bankr. C.D. Cal. 1990)).

12 The evidentiary effect of a proof of claim is “similar to a verified complaint.” *In re Heath*,
13 331 B.R. 424, 435 (B.A.P. 9th Cir. 2005) (following *In re Cluff*, 313 B.R. 323, 333 (Bankr. D. Utah
14 2004), *In re Garner*, 246 B.R. 617, 622 (B.A.P. 9th Cir. 2000)); *see also In re Latin*,
15 No. EC-08-1082, 2009 WL 7751424, at *5 (B.A.P. 9th Cir. Feb. 11, 2009) (“A proof of claim is
16 often analogized to a complaint”). It follows that a proof of claim need only set forth “enough
17 details so as to provide a defendant and the court with a *fair idea of the basis of the complaint and*
18 *the legal grounds claimed for recovery.*” *Latin*, 2009 WL 7751424, at *5 (quoting *In re Acequia*,
19 *Inc.*, 34 F.3d 800, 814 (9th Cir. 1994)) (emphasis in original).

20 Under California law, a complaint need not specify an amount of damages in a personal
21 injury or wrongful death action. *See* Cal. Civ. Pro. § 425.10 (West 2019). The amount of damages
22 awarded for emotional distress is determined by the finder of fact, often a jury, based on the entire
23 evidentiary record, and not an amount pled by the plaintiff. *See Tan Jay Int’l., Ltd. v. Canadian*
24 *Indem. Co.*, 198 Cal. Rptr. 907, 913 (Cal. Ct. App. 1988).

25 When a claim is “based on a writing,” Bankruptcy Rule 3001(c) requires the claimant to
26 provide supporting documentation by filing “a copy of the writing” with the proof of claim. Fed.
27 R. Bankr. P. 3001(c). But, when a claim is not based on a writing, such as a claim that is “created
28 by statute” or arises “by operation of tort law,” “no documentation is required to achieve *prima*

1 *facie* status.” *Cluff*, 313 B.R. at 332. This principle is illustrated by the Ninth Circuit’s decision in
2 *In re Los Angeles International Airport Hotel Associates*, wherein the Circuit upheld the reversal
3 of a bankruptcy court decision requiring a taxing authority to attach supporting documentation to a
4 proof of claim reflecting a tax claim. 106 F.3d 1479, 1480 (9th Cir. 1997). In that case, the debtor’s
5 position missed the nature of the underlying “legal obligation[],” which was created by statute and
6 not a contract. *Id.* The Ninth Circuit found that, “[i]n the case of a contract, the legal obligation is
7 created by the writing itself,” however, “[i]n the case of a [] tax, the obligation to pay the tax is
8 created solely by the completion of the transaction to which the state statute applies.” *Id.*

9 The Circuit held that the tax obligation was “ascertainable even absent such a writing” and
10 that “Rule 3001(c) is invoked where the obligation itself” is “based upon a writing.” *Id.* Thus,
11 when “no writing is required to create a [] liability,” “Rule 3001(c) does not apply to claims for
12 such debt.” *Id.* (emphasis added); *see In re Jenny Lynn Mining Co.*, 780 F.2d 585, 587 (6th Cir.
13 1986) (no documentation had to be attached to proof of claim under former Bankruptcy Rule
14 13-302(c) where claim was based on statute and not on writing). As the court in *Cluff* recognized,
15 the same rationale applies equally to claims arising “by operation of tort law.” 313 B.R. at 332.

16 1. The TCC’s Form Complies with Applicable Law

17 The TCC’s model claim form was designed based on the foregoing legal standard. The
18 TCC began with Official Form 410, and then made modifications to ensure that any claim submitted
19 using the TCC’s form would provide a “fair idea” of the basis of the claim and the “legal grounds
20 claimed for recovery.” *Latin*, 2009 WL 7751424, at *5.

21 The TCC’s form incorporates a questionnaire to elicit information regarding the basis for
22 each Fire Claim. Fire Claimants are required to identify the specific Fire giving rise to the Fire
23 Claim, the alleged harm caused by such Fire, and the damages being sought. The TCC’s form does
24 not use confusing names but requires Fire Claimants to check a box identifying the year of the fire
25 giving rise to the Fire Claim and provide the location of the loss. This information can then be used
26 to match a claim with a Fire. The TCC’s form removes requests for information that are unlikely
27 to apply—*e.g.*, secured status, cure amount, setoff rights, and priority. This will focus each Fire
28 Claimant on providing the information that reflects the basis for the Fire Claim being asserted.

1 The TCC's form does not include unfair questions. The TCC's form does not ask Fire
2 Claimants to include dollar amounts. Since the appropriate standard for a proof of claim is that of
3 a "complaint," it is improper for PG&E to require dollar amounts for personal injury or emotional
4 distress, as this does not need to be included in a complaint under California law. *See Heath*, 331
5 B.R. at 435; *Cluff*, 313 B.R. at 333; *Garner*, 246 B.R. at 622; *In re Latin*, 2009 WL 7751424, at *5.
6 It is expected that expert testimony will be offered to substantiate claims for economic damages. It
7 serves no purpose to require Fire Claimants, including those unrepresented by counsel, to specify
8 dollar amounts for each component of their overall Fire Claim. Fire Claims do not have to be
9 liquidated to set forth the basis for such claims and provide notice of the Fire Claimants' intent to
10 hold PG&E liable therefor, which is the purpose of a proof of claim. *See Barker*, 839 F.3d at 1195;
11 *Daystar of Cal.*, 122 B.R. at 408.

12 The TCC form does not require supporting documentation. The Fire Claimants are not
13 voluntary creditors. PG&E's legal obligation to pay Fire Claimants is not created by a writing. No
14 writing is required to create such liability. Under *Los Angeles International Airport*, Rule 3001(c)'s
15 documentation requirement does not apply to Fire Claims. 106 F.3d at 1480. No documentation
16 is necessary for a Fire Claim to be entitled to the "presumptive validity" attributed to it under
17 Bankruptcy Rule 3001(f). *Id.* at 1480; *see Cluff*, 313 B.R. at 332.

18 2. PG&E's Form Does Not Comply with Applicable Law

19 PG&E's form does not comply with the foregoing legal standard. As a threshold matter,
20 the TCC points to the fact that PG&E is asking the Court to find that Fire Claimants that have filed
21 claims using Official Form 410 must re-file their claims using PG&E's form. This is not only
22 improper, this is an admission that PG&E's form does not conform substantially to the appropriate
23 Official Form. But, for PG&E's form to be approved, the Court must find that it conforms
24 "substantially to the appropriate Official Form." Fed. R. Bankr. P. 3001(a). PG&E cannot logically
25 ask the Court to find that its form conforms substantially to Official Form 410 and ask the Court to
26 also find that Fire Claims filed using Official Form 410 are invalid and must be re-filed.

27 Putting this aside, PG&E's form is critically deficient. PG&E's form includes a confusing
28 questionnaire. *See Cordova Decl.* at ¶ 3. Not all Fire Claimants even know the name of the fire

1 that destroyed their homes, while other Fire Claimants were impacted by converging fires. *Id.*
2 PG&E's form requires Fire Claimants to provide specific dollar amounts for the categories of
3 damages claimed, including personal injury and emotional distress. The PG&E form requires Fire
4 Claimants to attach supporting documentation that is not required under Bankruptcy Rule 3001(c)
5 and the Ninth Circuit's holding in *Los Angeles International Airport*.

6 PG&E's demand for supporting documentation is not only contrary to law, but it ignores
7 the fact that fires PG&E caused destroyed the very documents at issue. PG&E wants to compel
8 victims to file complex and confusing proofs of claim attaching documents PG&E's fires destroyed,
9 while many victims are homeless. Under PG&E's procedures, PG&E will have the ability to object
10 to Fire Claims on the basis that supporting documents that PG&E destroyed are not attached to
11 proofs of claim. PG&E seeks to obtain a benefit from its destruction of property.

12 **B. Insurance Information Is Duplicative**

13 PG&E's form also requests insurance information—*i.e.*, each Fire Claimant must identify
14 whether the Fire Claim is covered by insurance, the insurer, the covered property, the amount of
15 coverage, and the amount of insurance proceeds (if any) received to date. Motion at Ex. C-2.
16 PG&E asserts that this is required to “value claims accurately.” *Id.* at 28, 35. But, PG&E will
17 receive this information from the insurers themselves through the Wildfire Subrogation Claimant
18 Proof of Claim Form. It is not necessary for PG&E to also seek this information from the Fire
19 Claimants. PG&E's request is duplicative.

20 PG&E also fails to explain why the requested insurance information is necessary.
21 California's “collateral source rule” precludes consideration of amounts paid by an insurer when
22 determining the total damages owed by a tortfeasor. *Anheuser-Busch, Inc. v. Starley*, 170 P.2d 448,
23 450 (Cal. 1946). Tortfeasors, like PG&E, cannot “avoid payment of full compensation for the
24 injury inflicted merely because the victim has had the foresight to provide himself with insurance.”
25 *Helfend v. S. Cal. Rapid Transit Dist.*, 2 Cal. 3d 1, 6 (Cal. 1970); accord CACI No. 5001 (2017
26 edition) (“evidence that the plaintiff was insured is not admissible under the ‘collateral source
27 rule’”). For example, as the court in *Pacific Gas & Electric Co. v. Superior Court* held, when an
28 insurer agrees to pay on an insurance policy and waive its subrogation rights, the insured tort victim

1 is free to pursue the tortfeasor for the full amount of the loss. 33 Cal. Rptr. 4th 174, 184 (Cal. Ct.
2 App. 1994). PG&E's claim form creates confusion by potentially encouraging Fire Claimants to
3 undervalue their claims and wrongly implying that Fire Claimants could be committing fraud if
4 their claims reflect all damages suffered.

5 **C. PG&E's Claim Form Is Not Necessary to Advance the Chapter 11 Cases**

6 PG&E tries to justify its claim form as being necessary to advance the Chapter 11 Cases.
7 PG&E wraps the relief it seeks in bankruptcy phrases like "gating issue," "essential to the claims
8 estimation resolution process," and "critical importance" to progressing the Chapter 11 Cases
9 toward plan confirmation. Motion at 10, 13, 27 & 28. The TCC respectfully submits that this is
10 not what PG&E is attempting to accomplish.

11 The TCC agrees that a gating issue is the magnitude of PG&E's liability with respect to Fire
12 Claims. This is not disputed. The Debtors filed their Chapter 11 Cases as solvent cases. For equity
13 to "receive or retain" any property under a plan of reorganization, Fire Claimants must consent or
14 be paid in full. *See* 11 U.S.C. § 1129(b)(2)(B)(ii). Case law indicates that Fire Claims may be
15 estimated on an aggregate basis for purposes of voting and plan confirmation. *See, e.g., In re North*
16 *Am. Health Care, Inc.*, 544 B.R. 684, 692 (Bankr. C.D. Cal. 2016) (approving tort claim resolution
17 proposal under which personal injury and wrongful death claims would be estimated on an
18 aggregate basis for purposes of voting and plan confirmation); *In re G-I Holdings, Inc.*, 323 B.R.
19 583, 625 (Bankr. D.N.J. 2005) (adopting procedures to estimate tort claims on aggregate basis).

20 PG&E's argument is based on the false assumption that the only way to get data to estimate
21 Fire Claims on an aggregate basis is to obtain it from tens of thousands of victims, many of whom
22 are homeless and living in tents. PG&E wants to convert the claim form from a notice tool into a
23 discovery tool. But, again, extensive documentation is not required under Bankruptcy Rule 3001(c)
24 and the Ninth Circuit's holding in *Los Angeles International Airport*.

25 Moreover, claims estimation work is ongoing. Data has been and can be obtained from
26 sources other than the victims. The party with the most data—PG&E—will neither produce nor
27 fully disclose to the TCC what information it already has and, therefore, does not need to obtain
28 from the victims. PG&E has already valued Fire Claims through its Butte settlement process, which

1 Fire Claims are representative of the types of losses that Fire Claimants are asserting. PG&E's
2 valuations, if produced, could be used to estimate claims in the 2017 North Bay Fires and the 2018
3 Camp Fire.

4 The claim estimates contained in PG&E's SEC filings are not derived out of thin air but are
5 based on the data and information PG&E has already collected. Woltering Decl. at Ex. I, 46. For
6 example, PG&E estimated Fire Claims in its March 31, 2019 Form 10-Q SEC filing on the basis
7 that PG&E had sufficient information to "determined that it is probable that it will incur a loss of
8 \$1.1 billion in connection with the 2015 Butte fire." *Id.* at 55. PG&E cannot include claim
9 estimates in its SEC filings unless it has a reasonable basis for doing so. *See* 17 C.F.R. § 240.10b-5.
10 It is unreasonable for PG&E to demand discovery from victims without first producing its data to
11 the TCC and seeking data from subrogation insurers.²

12 But, even assuming, *arguendo*, that information must be obtained from victims, the TCC's
13 two-step process takes this into account. The Court can approve the TCC's form now and approve
14 a supplemental information request later, when, and if, it is shown that it is needed. The TCC
15 disputes PG&E's contentions that the documents it seeks to obtain from victims are needed for
16 claims estimation or plan formulation.

17 Nor does it make sense to seek data from Fire Claimants in the first instance. The reliability
18 of estimation methodologies depends on the underlying data. Any estimated damages submitted
19 by victims with no relevant qualifications would be speculative at best. If PG&E and its
20 professionals seek to utilize self-reported data, the reliability of any resulting estimation would be
21 questioned by various stakeholders.

22 Herein lies the point—the proof of claim form for Fire Claimants has little or no value as a
23 source of information. It will identify Fire Claimants that can be treated as creditors for purposes
24 of voting and distribution. *See* Fed. R. Bankr. P. 3003(c)(2). But, it is the data that PG&E has and
25 the data that is available from sources other than the victims that will enable experts to perform the
26

27 ² The TCC is deposing PG&E's corporate representative on PG&E's ability to estimate claims and reserves the right
28 to supplement this Objection by filing or submitting such deposition testimony in connection with the hearing on this
Objection.

work necessary to estimate Fire Claims. PG&E is not seeking to approve a claim form or procedures for purposes of gathering information to estimate tort claims but to avoid liability.

D. Legal Standard for Proper Notice

Due process requires that known creditors receive actual written notice of a debtor's bankruptcy filing and claims bar date. *See In re Maya Const. Co.*, 78 F.3d 1395, 1399 (9th Cir. 1996) (due process requires formal notice to known contingent creditors); *In re Reg'l Care Servs. Corp.*, No. 16-1213, 2017 WL 2871751, at *6 (B.A.P. 9th Cir. July 5, 2017) ("[i]t is a fundamental principle of due process that known creditors of a debtor are entitled to actual notice of a claims bar date before their claims can be extinguished") (citation omitted).

A known creditor is one whose identity is either known or "reasonably ascertainable by the debtor." *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 490 (1988). Customers with whom a debtor has a "direct relationship" are generally considered known creditors. *See PacifiCorp and Van Cott Bagley Cornwall & McCarthy v. W.R. Grace*, No. 05-764, 2006 WL 2375371, at *4 (D. Del. Aug. 16, 2006). For unknown creditors, constructive notice by publication typically satisfies the requirements of due process. *See Huntsinger v. The Shaw Group, Inc.*, 268 Fed. Appx. 518, 521 (9th Cir. Feb. 26, 2008) (notice by publication proper for unknown creditors' claims) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950)).

When actual or constructive notice is required, a "process which is a mere gesture is not due process." *Mullane*, 339 U.S. at 315. "[N]otice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174 (1974). The level of notice due to a party is "highly dependent on the context;" thus, a "process that may be constitutionally sufficient in one setting may be insufficient in another." *In re Mansaray-Ruffin*, 530 F.3d 230, 239 (3d Cir. 2008).

The unique context here is that PG&E's tortious conduct creates noticing problems. Fire Claimants that are the Utility's current or former customers, and Fire Claimants once located in the region where PG&E supplied power and whose identities can be determined by PG&E from a diligent investigation of its records or other sources, are known creditors. PG&E, however, cannot

1 deliver a notice to a house that was destroyed. The mailbox is gone. Families were displaced.
2 While the identity of the Fire Claimants is known or can be determined, actions must be taken here
3 to locate known creditors. Many unknown creditors are suffering from trauma. A constitutionally
4 sufficient notice program must take this into account. *See Mansaray-Ruffin*, 530 F.3d at 239

5 1. The TCC's Notice Plan Complies with Applicable Law

6 The TCC's program addresses the unique context of these Chapter 11 Cases. The TCC's
7 notice plan includes the use of third-party subpoenas to insurers and record searches to identify
8 contact information for all known Fire Claimants. *See Weisbrot Decl.* at ¶ 67. PG&E has retained
9 a company that maintains a GIS database that lists properties and property owners located within
10 the perimeter of the 2017 North Bay Fires. *See Orsini Decl.* at 3. The same can be done for the
11 2015 Butte Fire and the 2018 Camp Fire. PG&E's customer data, when supplemented in this
12 manner, could be used to provide notice to known creditors.

13 For unknown Fire Claimants, the TCC proposes to use multiple forms of media—*e.g.*,
14 television, radio, magazines, newspapers, and social media. The TCC's program achieves a much
15 higher frequency. The TCC's proposed television advertising alone is estimated to reach over 74%
16 of adults in the Northern California market with an estimated frequency of 10 times. *See Weisbrot*
17 *Decl.* at ¶ 90. The TCC's paid media plan is designed to ensure that 95% of adults in Northern
18 California receive notice approximately 51.95 times. *Id.* at ¶ 83. The TCC is not proposing to
19 spend more, but to spend funds in the right way. Of the \$22 million budgeted by PG&E, the TCC
20 proposes to spend \$21.8 million, of which \$12.8 is allocated to the TCC's media campaign.

21 The TCC proposes to utilize a simple one-page notice. On this point, the TCC calls the
22 Court's attention to the bar date notice filed by the Debtors' counsel in the Takata bankruptcy, a
23 copy of which is attached as **Exhibit 6**. *See In re TK Holdings Inc.*, No. 17-11375 (Bankr. D. Del.
24 2017) (Dkt. No. 282-1). This two-page document was used to provide notice of the deadline for
25 filing proofs of claim for damages relating to defective airbags *and* the deadline for objecting to
26 the plan and disclosure statement. A one-page document can be used here to provide notice.

2. PG&E's Notice Plan Does Not Comply with Applicable Law

PG&E's notice program fails to address the unique context of these Chapter 11 Cases. PG&E proposes to use a six-page notice that is confusing. PG&E refuses to go beyond its own books and records and will only provide actual notice to parties it considers "Known Wildfire Claimants." The addresses maintained in PG&E's books and records are not accurate. A letter cannot be delivered to a house that was destroyed. Families forced to relocate have new addresses. PG&E has an obligation to obtain updated addresses for all Fire Claimants. The identities of the parties harmed by fires PG&E caused are known or reasonably ascertainable. As set forth in the Declaration of Kirk Trostle, attached as **Exhibit 7** (the "**Trostle Declaration**"), an effective notice plan will require significant effort in the form of grassroots and other evidence-based strategies to reach victims of the 2018 Camp Fire. Trostle Decl. at ¶ 8.

PG&E's Supplemental Notice Program also is inadequate. PG&E is proposing to spend \$2 million of its \$22-million budget on media, which, if used effectively, could reach such Fire Claimants. Motion 11, 23. PG&E's television and radio advertisements have an estimated frequency of 1.5 times, whereas the TCC's estimated frequency for the television alone is 10 times. Weisbrot Decl. at Ex. D. A simple comparison of PG&E's notice plan and the TCC's notice plan shows that PG&E is offering empty rhetoric on a matter of critical importance. *Id.*

3. Case Law Cited by PG&E Supports the TCC's Position

In support of its notice plan, PG&E cites multiple cases for the general rule that a debtor does not have an obligation to conduct "extended searches" "in all situations" "in the name of due process," and that a debtor can generally rely on the addresses set forth in its "own books and records." *See* Motion at 31–32. But, this ignores the fact that the identity of most Fire Claimants is known or is reasonably ascertainable and that the reason PG&E's books and records do not set forth accurate addresses is due to PG&E's tortious conduct. The case law PG&E cites in its Motion supports the TCC's position that PG&E cannot rely *only* on its books and records.

Chemetron Corp. v. Jones involved personal injury claims arising from exposure to toxic chemicals. 72 F.3d 341 (3d Cir. 1995). The claimants—individuals who visited or occupied houses near the debtor's nuclear waste dump—relocated from the region years before the bankruptcy. The

1 “vast majority of the claimants” were “not property owners, but guests” who visited houses near
2 the waste dump. *Id.* at 348. The claimants sued the reorganized debtor nearly four years after the
3 bar date and argued that the bankruptcy discharge did not apply because they were “known
4 claimants” who did not receive actual notice of the claims bar date. *Id.* at 345.

5 In rejecting this argument, the Third Circuit’s decision turned on whether the claimants
6 were “known” creditors—*i.e.*, “claimants who are identifiable through a diligent search.” *Id.* at
7 347. The Circuit rejected the position that the “‘reasonably ascertainable’ standard requires *only*
8 an examination of the debtors’ books and records, without an analysis of the specific facts of each
9 case.” *Id.* at 347 n.2 (emphasis in original). Examining the totality of the facts before it, the Circuit
10 determined that the claimants were not reasonably ascertainable because: (1) the “geographic area”
11 affected was “unclear”; and (2) all potentially relevant title searches still would not have revealed
12 the identity of claimants, many of whom “merely visited houses in the vicinity of the sites at some
13 point in the distant past.” *Id.* at 347–48.

14 Here, PG&E knows the affected geographic area and a title search of that area would
15 identify claimants whose homes were destroyed by the 2015, 2017 and 2018 Fires. *See, e.g.*, Orsini
16 Decl. at 3. *Chemetron* supports the TCC’s position that Fire Claimants whose identity can be
17 ascertained through record searches are known creditors entitled to actual notice of the Bar Date.
18 *See also Maya*, 78 F.3d at 1400 (distinguishing *Chemetron* because the debtor “could not identify
19 the potential creditors”); *Waterville Indus., Inc. v. First Hartford Corp.*, 124 B.R. 411, 413 (D. Me.
20 1991) (successor in title to property the debtor polluted entitled to notice where the debtor “was
21 aware of contingent liability to successor titleholders for the environmental hazards it had created”).

22 *Wise v. NCD Inc.* involved an unlawful discrimination claim. No. 06-02027, 2006 WL
23 3051873 (D. Ariz. Oct. 25, 2006). Prior to the debtor’s bankruptcy, the claimant filed a
24 discrimination claim with the EEOC. *Id.* at *1. The EEOC found cause to believe that the debtor’s
25 termination of the claimant violated the ADA and provided such finding to the debtor. *Id.* The
26 debtor later filed for bankruptcy but failed to schedule the claimant’s claim or provide actual notice
27 to the claimant of the bar date. *Id.* at *4. The debtor argued that the claim should be discharged
28 based on the claimant’s constructive knowledge of the bankruptcy proceeding. *Id.* at *2.

1 In rejecting this argument, the court, following the Ninth Circuit’s decision in *Maya*, found
2 that “it is the debtor’s knowledge of a creditor, not the creditor’s knowledge of his claim, which
3 controls whether the debtor has a duty to list that creditor” and give “formal notice.” *Id.* at *3
4 (quoting *Maya*, 78 F.3d at 1398–99). While a debtor “need not be omnipotent or clairvoyant,” it
5 must “undertake more than a cursory review of its records and files to ascertain its known
6 creditors.” *Id.* at *3. Since the claimant in *Wise* was a known creditor who did not receive actual
7 notice of the chapter 11 proceeding, the debtor’s motion to dismiss the claim was denied. *Id.* at *4.
8 Again, this case supports the TCC’s position that PG&E must go beyond its books and records to
9 identify known Fire Claimants, and where its diligent efforts identify specific houses destroyed by
10 the relevant fires, it must provide those claimants with actual notice.

11 *In re Motors Liquidation Co.* involved product liability claims arising from GM’s use of
12 defective ignition switches. 829 F.3d 135 (2d Cir. 2016). The claimants sought to hold “New
13 GM”—the purchaser of GM’s assets—liable for the ignition switch claims. *Id.* at 143. New GM
14 argued that the claims were barred by the “free and clear” language in the sale order. *Id.* In rejecting
15 this argument, the Second Circuit found that the debtor’s knowledge of the ignition defect in its
16 cars necessarily meant that it knew “the identity of a significant number of affected owners.” *Id.*
17 at 159. This meant that the ignition claimants were known creditors entitled to actual notice, not
18 mere publication notice. *Id.*

19 The Second Circuit likened the adoption of New GM’s position to “reward[ing] debtors
20 who conceal claims against potential creditors.” *Id.* at 160. Likewise, approving notice procedures
21 that bless PG&E’s demand that it not be required to obtain updated address information would
22 reward it for causing fires that displaced Fire Claimants. PG&E also cites to the Bankruptcy Court’s
23 decision in *Motors Liquidation* without disclosing that the Circuit reversed it “insofar as it enforced
24 the Sale Order to enjoin claims relating to the ignition switch defect,” stating that “these plaintiffs
25 cannot be ‘bound by the terms of the [Sale Order]’” because they were known claimants who had
26 not received proper notice. *Compare* Motion at 31 (citing *In re Motors Liquidation Co.*, [5]29 B.R.
27 510, 550 (Bankr. S.D.N.Y. 2015)) with *Motors Liquidation*, 829 F.3d at 166.

1 Monster Content v. Homes.com, Inc. involved whether claims for breach of a licensing
2 agreement were partially barred by a prior bankruptcy. 331 B.R. 438, 440 (N.D. Cal. 2005). The
3 court held that the claimant was a known creditor because, like *Maya*, the claimant sent a demand
4 letter during the bankruptcy. *Id.* at 442–43. The court, following the Ninth Circuit’s decision in
5 *Maya*, rejected the debtor’s argument that the requirement of actual notice was satisfied based on
6 the claimant’s actual knowledge of the bankruptcy, finding that the “fact that a creditor has actual
7 knowledge that a Chapter 11 bankruptcy proceeding is going forward involving a debtor does not
8 obviate the need for notice.” *Id.* at 443 (quoting *Maya*, 78 F.3d at 1399).

9 Perez v. Safety-Kleen Systems, Inc. involved rest break and wage statement claims based on
10 the debtor’s alleged prepetition failure to provide meal and rest breaks and accurate wage
11 statements. 253 F.R.D. 508 (N.D. Cal. 2008). The debtor argued that claims arising prior to the
12 confirmation of its chapter 11 plan were barred. The claimants argued that their claims were not
13 barred since they did not receive notice of the bankruptcy proceeding. In rejecting this argument,
14 the court reasoned that while known creditors are entitled to actual notice, the claimants “presented
15 no evidence that they communicated their claims” to the debtor, nor did they provide “any reason
16 why [the debtor] should be charged with knowledge of their claims.” *Id.* at 518. Here, PG&E
17 cannot claim that it has no knowledge of Fire Claims or that the identity of the Fire Claimants is
18 not reasonably ascertainable through a diligent investigation.

19 PacifiCorp and Van Cott Bagley Cornwall & McCarthy v. W.R. Grace involved
20 remediation of hazardous materials from a vermiculite mine site. 2006 WL 2375371, at *1. The
21 court’s decision turned on whether *Chemetron* required the debtor to conduct a title search of the
22 site to ascertain the identities of current and prior owners. *Id.* at *5. The court found that the “the
23 geographic and temporal dimensions found in *Chemetron*”—which made the “vast majority of late
24 claimants” in *Chemetron* impossible to identify by a title search—were “not present in this case.”
25 *Id.* at *7, 10. The court, however, found that the late claimants were unknown due to the fact that
26 they had “no direct relationship” with the debtor—*i.e.*, the claimants were not contract
27 counterparties or the debtor’s “customers.” *Id.* at *4, 10. This made the case distinguishable from
28 other cases where actual notice was required. *Id.* at *10.

1 In this case there is a “direct relationship”—most of the Fire Claimants are the Utility’s
2 current or former “customers.” *See id.* at *4. Those who were not customers were located within
3 the region where PG&E supplied power and PG&E can determine identities of Fire Claimants from
4 a diligent investigation of its records and the sources identified in the Orsini Declaration. Since
5 PG&E can reasonably identify the Fire Claimants, it has an obligation to locate them and provide
6 actual notice to mitigate the harm it caused by starting the fires that displaced families.

7 PG&E also cites several cases discussing when notice by publication is appropriate. Motion
8 at 32. These cases are inapposite because publication notice is insufficient for known creditors.
9 PG&E quotes the following excerpt from the Seventh Circuit’s decision in *Fogel v. Zell*: “Notice
10 by publication may thus be entirely appropriate when potential claimants are numerous, unknown,
11 or have small claims (whether nominally or ... realistically)—all circumstances that singly or in
12 combination may make the cost of ascertaining the claimants’ names and addresses and mailing
13 each one a notice of the bar date and processing the responses consume a disproportionate share of
14 the assets of the debtor’s estate.” 221 F.3d 955, 963 (7th Cir. 2000).

15 PG&E, however, blindly ignores the next sentence in the Circuit’s decision: “That isn’t this
16 case.” *Id.* And, neither is this case. The general rule that “extended searches” are not required
17 cannot apply here. To put a fine point on this issue, consider the 2018 Camp Fire. This fire
18 destroyed the entire town of Paradise. PG&E can tell whose houses were destroyed from its own
19 books and records, its access to GIS databases, and files maintained by insurers. These parties can
20 be identified as easily as the customers who purchased GM cars with defective ignition switches
21 that the Second Circuit held were “known creditors.” *Motors Liquidation*, 829 F.3d at 159. PG&E
22 knows or can reasonably ascertain their identities.

23 The 2018 Camp Fire destroyed homes and displaced virtually all who lived or maintained
24 businesses in Paradise. PG&E has an obligation to ensure that they receive actual notice. PG&E
25 created this problem by causing the fires. And, PG&E should be required to address this problem
26 before its notice procedures are approved. Otherwise, PG&E could be rewarded for its misconduct.
27 But beyond that, doing the right thing here—identifying and providing actual notice to Fire
28 Claimants—should not be difficult. As the TCC’s notice program shows, a notice plan can be

1 implemented that uses third-party subpoenas to insurers and record searches to identify contact
2 information for all known Fire Claimants. *See* Weisbrot Decl. at ¶ 67.

3 **E. PG&E's Bar Date Should Not be Approved**

4 Finally, PG&E demands an early Bar Date. PG&E's proposed Bar Date of September 16,
5 2019 is improper in light of the related forms and notice procedures proposed by PG&E. The Camp
6 Fire happened in late 2018. As set forth in the Dion Declaration (attached as **Exhibit 8**), Fire
7 Claimants that experienced the Camp Fire may exhibit signs of post-traumatic stress, particularly
8 those who were exposed to imminent risk of death. Dion Decl. at ¶¶ 5–8.

9 Even assuming the adoption of the TCC's claim form and notice procedures, the Bar Date
10 should be set no earlier than January 31, 2020. *Id.* at ¶ 12. If PG&E's form is adopted, Fire
11 Claimants affected by the 2018 Camp Fire will need substantial time to comply with the onerous
12 requirements of PG&E's form. This would mean a Bar Date in late 2020.

13 Consideration also should be given to the projected lifespan of the Chapter 11 Cases. PG&E
14 has already moved to extend exclusivity. *See* Dkt. No. 1797. A plan of reorganization could require
15 a legislative solution, which may not be available this year. The maturity date of PG&E's DIP
16 Facility is December 31, 2020, but PG&E has an option to extend the term to December 31, 2021.
17 There is no reason to impose a premature Bar Date for Fire Claimants if PG&E is not going to
18 emerge from bankruptcy until 2021.

19 **VII. CONCLUSION**

20 The TCC comes before this Court with a problem and a solution. The problem is the fact
21 that PG&E is trying to use the claims process to avoid liability. PG&E attempts to accomplish this
22 goal through unduly complex forms, a deficient notice process, and an early Bar Date. The solution
23 is the TCC's claim form which is designed to maximize creditor participation, the TCC's robust
24 notice program that achieves a more effective outreach using the same budget, and a bar date that
25 is earlier than late 2020. The TCC has a strong interest in moving this process forward, but it must
26 be done the right way. There is simply too much at stake for Fire Claimants who have already lost
27 more than anyone else involved in these Chapter 11 Cases.

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Dated May 31, 2019

BAKER & HOSTETLER LLP

By: /s/ Eric Goodman

*Attorney for The Official Committee of Tort
Claimants*